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European Critical Raw Materials Act – input by the Confederation of Swedish Enterprise

The European Commission has published an initiative containing a Regulation and a communication aimed at increasing the availability of critical and strategic raw materials in Europe - the so-called 'Critical Raw Materials Act' (CRMA). The Confederation of Swedish Enterprise below provides its comments on the proposed Regulation.

Executive summary

- The Confederation of Swedish Enterprise welcomes the European Commission's initiative to improve access to critical and strategic raw materials for business in the EU. It notes that this is both through the intention to promote opportunities for exploration, mining, processing and recycling as well as the ambition to strengthen trade relations with like-minded countries. This will provide companies with the opportunity to secure their value chains through business-driven diversification.
- However, the European Commission's initiative is too narrow in its design. The Confederation of Swedish Enterprise advocates broader measures, which remove obstacles to the development of the entire value chain. It is important that the European Commission's proposal takes into account the fact that critical and strategic raw materials are often derived as a by-product of the extraction of other raw materials.
- The main obstacle that both the European Commission and the Member States should focus on is the long and unpredictable permit processes, which often constitute crucial barriers to the development of new mining activities. The proposal to introduce fixed time limits for strategic projects may be welcomed by those affected. However, from a market perspective this is problematic, as other activities may be disadvantaged when selected projects are prioritised. More fundamental measures are required to bring about genuine change and accelerate the transition. In addition, a new organisation of the licensing process may risk undermining the possibility of an effective review.
- The European Commission's focus on strategic projects also risks leading to a high administrative burden, without necessarily benefiting those companies most in need of support and guidance.

General comments

The Confederation of Swedish Enterprise welcomes the European Commission's initiative to safeguard the Union's raw material supply, through its intention to improve opportunities for the exploration for, and extraction of, critical and strategic raw materials in the EU, and to enable increased trade and market-driven diversification. Also, the recognition that the existing unpredictable - and often prolonged - permit processes require an overhaul is to be welcomed.

Efforts to strengthen the competitiveness of European industry must be a top priority and should permeate all the initiatives of the European Commission. The CRMA can play an important role here by enhancing the ability of European companies to strengthen their value chains and gain access to

cost-effective critical and strategic raw materials in the face of strong global competition. These raw materials are frequently critical for industrial development in those sectors that are key to the green transition. The CRMA can also assist in the exploration and extraction of metals and minerals as well as the entire value chain from mining, processing to recycling.

The Confederation of Swedish Enterprise wishes to stress the core values that are fundamental to the business community's continued growth and to creating the opportunities to meet the climate challenges. To promote additional advances, technology neutrality is a prerequisite. However, using legislation to control which existing technologies or materials should be promoted risks disadvantaging important areas that may be equally important for business growth and opportunities to meet climate challenges. This approach risks distorting competition and even perhaps inhibiting new discoveries or innovations. In addition, the capacity to adapt will be severely limited if prevailing circumstances suddenly change.

The Confederation of Swedish Enterprise therefore advocates broad solutions, which promote business in general, rather than selective initiatives and fast tracks for individual industries, technologies or - as in this case - raw materials. For this reason, it is important that the increased priority given to strategic raw materials in particular in the Regulation is not interpreted in a contradictory manner. For this reason, the Regulation should make it clear that the extraction, processing and recycling of other raw materials is also of great importance to European industry.

Specific articles of the European Commission's proposal are discussed below.

Benchmarks (Article 1)

The proposal involves setting percentage targets for the Union's own capacity to extract, process and recycle strategic raw materials to meet its own annual needs. The Confederation of Swedish Enterprise believes that it should be market forces that determine where, and to what extent, various (raw) materials and services should be produced. Trade with several other market economies can ensure a good supply of strategic raw materials and may prove preferable if other countries outside the EU have comparative advantages in production. Similarly, not all (raw) materials should be produced in the EU where there are comparative disadvantages and other circumstances that cannot be addressed by improving the functioning of the market, for example through improved regulation.

It should also be noted that the extraction of raw materials is fundamental to the green transition and the economy as a whole. Sweden has a strong and innovative mining industry, one which has much to gain from the issue being properly recognised and provided with a more positive approach at EU level. The current wording can fulfil the purpose by placing an increased value on the extraction, processing and recycling of strategic raw materials. This can be important in the balance both in the design of new legislation and in ongoing permit processes, where the possibility of conducting an activity of this kind is weighed against other important environmental and climate interests.

The Confederation of Swedish Enterprise believes that the benchmarks set in Article 1 should remain indicative. They should act as a signal of the importance placed on improving conditions and removing obstacles to increased mining, processing and recycling in Europe. Any additional measures that the European Commission may propose or take under Article 1(3) should be broad measures, ones that focus on removing precisely such regulatory obstacles.

The goal in 1.2 (b), of not being dependent on a single third country for more than 65 per cent of the EU's consumption of each individual strategic raw material is, in principle, not one that the Confederation of Swedish Enterprise would object to, as this can be achieved both through increased domestic production and increased trade with other countries.

Otherwise, the Confederation of Swedish Enterprise cannot assess the reasonableness of the specific percentages proposed. Given that the circumstances vary greatly between different strategic raw

materials, the possibilities of achieving the benchmarks that have been set also vary. This further justifies the fact that the specific levels should not be attributed too much importance.

Lists of strategic/critical raw materials (Articles 3-4)

The Confederation of Swedish Enterprise has no comment on the current lists, or the method and parameters used to define the raw materials included in the lists. However, it is worth considering whether the lists should be reviewed more frequently. Reviewing them every four years seems too infrequent, given how quickly supply and demand in the market can change for these and other raw materials. The Confederation of Swedish Enterprise therefore proposes that the European Commission should evaluate - and where necessary update - the lists every two years.

Strategic projects (Articles 5-7)

The articles contain provisions on the criteria for being classified as a strategic project, the application and assessment process used, and the implementation of strategic projects. The classification as a strategic project is supposed to offer certain benefits. These should include time limits for the handling of permit processes, priority in permit and other administrative processes if available along with help from the authorities to coordinate funding.

The Confederation of Swedish Enterprise retains fundamental doubts over this type of strategic project. Some projects will be prioritised over others based on an application process where administrators and experts - in this case the European Commission taking into account the opinion of the European CRM Board (European Critical Raw Materials Board) - will decide which projects are selected.

This process is likely to increase administrative costs and extend project duration. The criteria selected are open to interpretation and will increase uncertainty for market players. It is unclear whether the projects selected will actually be the ones most in need of help for financing and managing the permit processes. Furthermore, it is not certain that the experts from the European Commission and the CRM Board who will assess applications will be able to do this in such a way that the outcome will be better than if promotional measures were introduced for all types of business projects that handle strategic raw materials, and the market was then allowed to operate without further intervention from the public sector. The Confederation of Swedish Enterprise therefore believes that it would have been preferable if the section relating to strategic projects was not included in the Regulation. It believes it would be better if all projects that include the handling of the raw materials included in the list of strategic raw materials were provided with the same conditions.

Given that the strategic projects will be part of the final Regulation, the Confederation of Swedish Enterprise believes that it is important that the criteria in Article 5 are defined in more detail. In addition, consideration should be given as to whether the requirements for information from companies can be reduced.

- It is important that smaller projects are not disqualified by 1(a), which requires the project to make a meaningful contribution to securing the Union's supply of strategic raw materials. Similarly, it is also important that larger projects where the main metal mined is not included in the list of strategic (or critical) raw materials but where a by-product is - and where the amount of critical raw materials is expected to be relatively limited - should still be given the same opportunities to be classified as a strategic project. All contributions, whether large or small, should be considered as meaningful, and it is also difficult to assess how large quantities can be mined, processed and recycled over a longer time horizon.
- It should be made clear that the criterion of sustainable implementation of the project 1(c) can be met by complying with applicable laws and regulations. There is a risk that the fulfilment of this

criterion will place an undue administrative burden on companies. Companies' policy documents in various respects should not be included in the assessment.

- Companies should not have to prove that the project has cross-border benefits (1 (d)). Raw materials are a global commodity, and any contribution that increases the availability of strategic raw materials within the Union is beneficial. This criterion therefore appears to be superfluous.

An excessive administrative burden on businesses should be avoided. In particular, the requirements of 1(c) - which Annex III states may involve a large number of directives, guidelines and principles originating from the EU or other international bodies - may particularly hamper the ability of small businesses to cope with an application to have their project classified as a strategic project.

Article 6(8) allows the European Commission to withdraw a strategic project status if the project no longer fulfils the criteria in Article 5(1) or where incorrect information has been provided. The Confederation of Swedish Enterprise believes that this general description leads to unacceptable levels of uncertainty for companies and investors, given that the classification of which raw materials are considered strategic can change over time. In addition, it should be recognised that mining in particular is a long-term activity with certain uncertainties, for which companies cannot run the full risk in relation to this administrative procedure. Only in circumstances where companies have provided incorrect information or assessments – which, given the information available to the company at the time can be considered completely unrealistic - should the European Commission be able to withdraw a strategic project status.

One of the advantages of being classified as a strategic project is that these ventures are proposed to be labelled, in Article 7, as being of overriding public interest. However, it is not clear what benefit this provides in practice, as the article is worded in such a way that the provisions of the relevant directives must be complied with in any event.

Permit processes (Articles 8-11), general comments

The proposals concerning the permit processes are central to the conditions of the business community and to achieving the purpose of the Regulation. The ambition of shortening the time for processing is welcome. However, the Confederation of Swedish Enterprise is doubtful about the feasibility in practice, unless the proposal is amended and the Swedish regulatory framework is reformed. The proposal also risks entailing negative consequences that counteract the stated objectives of the Regulation. This is described below in general terms, followed by specific comments on the articles.

Impact of EU acts on timeframes for permit processes

Permit processes in the Union does not currently act as an enabler of the transition in the way that it should. The Brussels-based organisation for business, BusinessEurope, has continuously highlighted this problem in discussions about ongoing legal acts. The problem arises in part in the existing and ongoing EU legislation and in part in the implementation by individual Member States. The Directives and Regulations governing permit procedures are often complex and unclear, leading to long and unpredictable processes in most Member States. With the CRMA, the European Commission's aim is to shorten the time it takes to get important activities for supplying raw material up and running. However, this intention is difficult to reconcile with the line that the European Commission is simultaneously pursuing in its work to revise the Industrial Emissions Directive (IED 2.0). This work expands the permit process to include many more steps and, in addition, adds requirements for various reports. These measures will clearly lead to longer handling of projects, regardless of whether they are prioritised or not.

It is not the time required for the actual processing that is the main problem, although there is certainly room for streamlining at the authorities. Rather, it is the substantive requirements of the Directives underlying the permit procedures, such as the IED, the EIA Directive, the species and habitat

directives and - not least - the Water Framework Directive, which are the fundamental causes of the long processing times and the lack of predictability. However, the substantive requirements and the requirements for investigations are left unchanged. The introduction of wording on overarching public interests in the Regulation is therefore likely to have no real effect.

The problems in the permit processes are thus of a much more fundamental nature than can be solved with prioritised cases, fixed time limits or increased supranationalism. What is required is a more general change of rules, where sustainable development is the key word rather than environmental protection.

Consolidated exercise of authority (One stop shop, Article 8)

The Confederation of Swedish Enterprise is basically in favour of a more-unified exercise of authority and fewer contact points for companies. If a single exercise of authority is to be introduced, it should cover all projects.

However, it is not easy to implement a one stop shop in practice. As the proposed Regulation also includes administrative measures other than the environmental permit process, the European Commission's proposal would probably be complicated to implement in Sweden and would require new organisational functions or reorganisations within the state and municipal administration. A superior state authority would directly conflict with the municipal planning monopoly. This would argue in favour of leaving the planning process outside the regulatory framework. However, it would, of course, be positive if a complete process could be implemented in such a short time, as proposed in the draft Regulation.

However, there are also problems with a single coordinating authority. The solution requires a clear division between responsibilities and procedural management, where the relationship between the authority and other independent authorities needs to be established, potentially using the National Cyber Security Centre as a model. It is important that such an authority does not become an intermediary that further delays the process compared to direct contact.

Although the Confederation of Swedish Enterprise shares the view that Member States ensuring that sufficiently trained personnel are available at the authorities is an important prerequisite, such a provision does not appear to be compatible with the principle of subsidiarity.

Prioritisation of strategic projects (Article 9)

The ambition of having faster permit processes for new activities, both in the mining industry and in other business activities, is something the Confederation of Swedish Enterprise welcomes. However, here the Confederation of Swedish Enterprise would like to stress the importance of all planning and permit processes where business activities are being tested being handled quickly and efficiently.

A prioritisation of certain projects risks pitting large companies against small ones, in the worst case scenario could lead to arbitrariness and set different industries against each other because such handling affects other projects and results in down-prioritisation, even though the projects may be equally important. By definition, prioritisation is about giving greater importance to one thing while giving less importance to another.

Duration of the permit process (Article 10)

The objective of introducing fixed time limits is to increase the efficiency of national authorities, something which is of course welcome. However, it is not the efficiency of the process that is the main problem, but rather the substantive requirements of the underlying Directives for the permit process.

Compared with the time taken in current Swedish permit processes, the prescribed time limits seem optimistic, not least if the municipal planning process is to be included.

The Confederation of Swedish Enterprise wishes to emphasise that it is highly problematic to set absolute time limits that could cover a wide range of different types of cases. Excessively short time limits risk leading to authorities - due to a lack of time to investigate applications properly - rejecting them in order to remain within the time limits now proposed by the European Commission. In the long run, this would mean that the times may ultimately even be longer than they are today, because the operator is forced to restart the process a number of times until a decision can be made within the time frame. However, it should be emphasised that the Swedish mining industry is in favour of the time limits, even although they do not formally cover extraction.

It is likely that time limits could work much better and with a lower risk of negative side effects if they were introduced for different parts of the process, as is the case for the EIA process. It would also be better if time limits were set on the basis of the different management processes, rather than being subsumed into a single process as is currently the case. If the processes cannot be conducted in parallel, the effect may be that one authority - such as the municipality - uses up all the time, after which the authority or court that is expected to manage the environmental process has no time left at its disposal.

On the other hand, it is positive that the national competent authority, together with the applicant and other authorities, are expected to draw up a detailed plan for the permit process, see Article 10(6). The Confederation of Swedish Enterprise welcomes the fact that greater demands are placed on the authorities in terms of creating greater clarity and predictability for companies.

Environmental assessments and permits (Article 11)

The Confederation of Swedish Enterprise welcomes the proposals that the authority needs to specify the scope and level of detail required of an environmental impact assessment (EIA). It is also welcome that the intention is to introduce a time limit within which an EIA must be approved.

Financing and other promotional measures (Articles 14-17)

The Confederation of Swedish Enterprise's basic view is that business activities and investments should be run on a commercial basis, without financial involvement from public actors. Various types of State Aid run the risk of distorting competition and disadvantaging actors who receive Aid. Less-efficient projects can be enabled while more-efficient ones are eliminated. State Aid should therefore be provided as an exception, and when there is a market failure. It should mainly be considered in the case of research and innovation, and in the early stages of an activity where the risk for an investor is high and access to information is scarce or asymmetric.

The proposals in this section are not considered to be decisive. The Confederation of Swedish Enterprise assesses that several types of measures prescribed can be considered to constitute such a selective benefit to companies that they could constitute State Aid under EU law. In such cases, the Aid must be designed in accordance with EU State Aid rules. It should also be reiterated that many of the measures prescribed would mainly serve smaller projects and project owners, while there is a risk that only larger, more resourceful actors will mainly be able to implement strategic projects. This means that the very model proposed by the European Commission - that large, resourceful projects should be rewarded, rather than creating better conditions for the entire sector and value chain - is subject to question.

National programme for exploration (Article 18)

The Confederation of Swedish Enterprise is in favour of each Member State drawing up a national programme for exploration, with a focus on producing information of interest for exploration, such as data and maps of areas of interest for exploration and increased geological knowledge of identified mineralisation. However, it believes that this programme should not be limited to critical raw materials alone.

Monitoring and stress testing (Articles 19-20)

The proposed Regulation also contains provisions on monitoring and stress testing. Member States and their authorities are expected to collect information from companies for this purpose.

The Confederation of Swedish Enterprise believes that the European Commission's proposal is overly far-reaching in its requirements for collecting information from companies. The monitoring should focus on the issue of access to the strategic raw materials, not on the monitoring of entire value chains (Article 19(3)(b)), which would require huge amounts of information. Furthermore, the Confederation of Swedish Enterprise is of the opinion that monitoring should be carried out primarily for the purpose of creating a basis for decision-making, in order to assess whether the list of strategic raw materials should be adjusted, not as a crisis instrument.

Member States should identify so-called 'key market operators', which are defined in more detail in Article 2(28). It should be clarified that it is only the large players at each individual stage that are being referred to. The current wording may give the impression that there is no restriction on which operators are covered by extraction, processing and recycling, but in fact it is only on the buyers' side that the restriction to large consumers applies.

In addition, the definition leaves a great deal of room for interpretation for the Member States. For this reason it is important that there is a harmonised application of this measure, in order that companies in certain Member States do not have a greater administrative burden imposed on them. It is important that the collection of information is proportionate, and is only for the purpose of evaluating the list of strategic raw materials.

Companies' risk preparedness (Article 23)

The Confederation of Swedish Enterprise rejects this article in its entirety. It seems to completely disregard the companies' own interest in securing their needs for raw materials and components. The issue of security of supply is one of the most important issues for companies, not least in the light of the shortages and supply disruptions that have characterised the global markets since the outbreak of COVID-19. This is therefore an unjustified intervention in companies' operations. It is also one where it will not be able to be followed up, irrespective of whether it is implemented or not. This is because the results will be filled with business-critical information and - according to the proposal itself - will only be presented to the company's board of directors.

Joint acquisitions (Article 24)

The Confederation of Swedish Enterprise believes that the starting point for this is that it should be the task of companies to secure their requirements for strategic raw materials through commercial transactions on a free market. However, there may be market failures where differences in market power and lack of information create difficulties for market participants. There may therefore be situations where it is justified for the public sector to play a role, by jointly purchasing raw materials, as proposed in Article 24. Joint purchases could be particularly beneficial for smaller Member States and/or smaller companies that may otherwise be in a weaker position. The Confederation of Swedish

Enterprise therefore does not dismiss this proposal, but believes that it should be used sparingly and only where there are strong indications that it is appropriate and useful to use such a solution.

National circularity measures (Article 25)

The Confederation of Swedish Enterprise believes that - in parallel with new extraction and mining of materials - the increased circularity of critical raw materials, for example through increased collection, reuse and recycling volumes, has an important role to play. Significant amounts of critical raw materials are currently found in old mining waste and closed landfills, but also in a number of industrial and consumer products. Individual Member States have a responsibility - but also excellent opportunities - to reinforce circularity, given the technological development and dissemination that has taken place over the last few years.

However, the Confederation of Swedish Enterprise questions whether national programmes are the most appropriate way to do this. It leaves considerable room for interpretation, and establishing these programmes creates parallel structures and undesirable special national solutions. For some of the measures listed in Article 25(1) - such as research and the skills development – there are national strategies and/or programmes that already exist to fulfil the same function. It should also be kept in mind that not all Member States have the capacity or need to establish their own recycling facilities for critical raw materials. In a functioning internal market, it should be possible to ship collected waste containing critical raw materials for further processing and recycling in those Member States that have the necessary technological capacity.

Instead of establishing national programmes, numerical and EU-wide benchmarks should be developed to increase the collection, reuse and recycling of critical raw materials and products containing them. Ultimately, it is the volumes in the EU as a whole that are most relevant, and not what each individual Member State achieves. However, these benchmarks should be indicative, in order to provide Member States with an incentive to remove the obstacles that currently exist in national legislation.

However, the Confederation of Swedish Enterprise is in favour of the proposal in Article 25(7) to establish a list of products and waste streams that may contain critical raw materials. Such a list - provided that it safeguards business confidentiality - increases the level of knowledge, creates a driving force for innovation and technological development and highlights existing legislative obstacles.

Recovery of critical raw materials from extractive waste (Article 26)

The Confederation of Swedish Enterprise is in favour of the ambition to recover critical raw materials from extractive waste and other forms of abandoned and closed landfills. These sites potentially contain large quantities of these materials, and the technology currently exists to deal with them. Compiling information on these would be a positive step in strengthening the knowledge and awareness of the presence of critical raw materials.

Recyclability of permanent magnets (Article 27)

The Confederation of Swedish Enterprise is basically in favour of increasing the transparency of what products contain, including those that include permanent magnets. However, the data carriers mentioned and proposed in Article 27 are almost identical to those that the digital product passport, within the framework of the European Commission's legislative proposal on ecodesign (ESPR), are aiming to do. In principle, this will eventually cover all products placed on the internal market. The

Confederation of Swedish Enterprise advises against developing parallel or overlapping requirements for digital information carriers in this legislation, as the Ecodesign Regulation is yet to be finalised.

Recycled content of permanent magnets (Article 28)

The Confederation of Swedish Enterprise sees high-quality recycling as an important tool for securing the availability of critical raw materials. However, the use of recycled material is dependent on the availability of high-quality recycled material in sufficient quantities. If requirements for the use of recycled materials are introduced, different conditions in different sectors need to be taken into account, and therefore such requirements need to be designed in close cooperation with industry and business. Given that the availability of recycled materials is currently heavily limited for certain types of raw materials, it is important that industry and business are given sufficient time to switch to production with a greater proportion of recycled materials.

Certification and environmental footprint (Article 30)

The Confederation of Swedish Enterprise welcomes the fact that the article clarifies that industry and business should be involved in developing the methods for measuring environmental footprints, and that the requirements for environmental footprints should not lead to unnecessary impact on trade or relevant environmental aspects that are already dealt with in other legislation. However, methods for measuring the environmental footprint should be harmonised and aligned with other legislation in the area, such as the European Commission's proposal for a Directive on the verification and communication of explicit environmental claims (green claims). However, the Confederation of Swedish Enterprise views it as problematic that the European Commission should be able to decide on different classes for environmental footprints through delegated acts. This is because such classes can have a major impact on the market and trade.

European CRM Board (Article 24)

The Confederation of Swedish Enterprise notes that the European Commission's proposal for a CRM Board lacks explicit representation from the business community. Further consideration should be given to the way in which the business community's crucial expertise can be brought into the work of the CRM Board. This could be achieved, for example, through an advisory sub-group, or at national level to provide input to each Member State's representative. At the same time, the Confederation of Swedish Enterprise would like to stress that here too - as with companies - significant administrative costs will be created, which must be justified by the uncertain benefits that the use of strategic projects will yield. It is therefore important that the CRM Board does not become too extensive.

Furthermore, the Confederation of Swedish Enterprise notes that the CRM Board should meet every three months to assess strategic projects. The Board will issue an opinion on strategic projects to the European Commission, which in turn will take this into account during its assessment of the project, where the maximum time is set at 60 days. Given that the CRM Board must first receive documentation from the applicant company and have time to familiarise itself with the contents, there is a risk that the overall assessment of a project application may take longer than 60 days.

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